IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

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Ram Singh & Ors. Vs. State of Raj.
S.B. CR. REVISION PETITION NO.231/2006

Against order dated 20.12.2005 passed by learned Additional Sessions Judge, Sojat in Criminal Appeal No.34/2002.

Date of Order :: 20th November, 2006.

PRESENT

HON'BLE MR.JUSTICE SATYA PRAKASH PATHAK

Mr. M.K. Garg for petitioners.
Mr. Vishnu Kachhawaha, Public Prosecutor.

BY THE COURT:

By the present revision petition challenge has been made to the order passed by learned Additional Sessions Judge, Sojat in Criminal Appeal No.34/2002, whereby the appellate court confirmed the order dated 07.11.2000 passed by learned Judicial Magistrate, Sojat in Criminal Case No.188/1992 by which the learned trial court has convicted the accused petitioners for the offence under Sections

323/149 and 147 IPC and gave probation under Section 4(1) of the Probation of the Offenders Act and also imposed a fine of Rs.300/- on each one of them.

The contention of learned counsel for the petitioners is that accused petitioners, who are government servants, were convicted by the learned Judicial Magistrate vide judgment of conviction and order of sentence dated 07.11.2000 under Sections 323/149 and 147 IPC but instead of sentencing the accused petitioners benefit of Section 4(1) of the Probation of Offenders Act was allowed laying certain conditions. The above judgment and order of sentence passed by the learned trial court was challenged before the learned Additional Sessions Judge, Sojat who confirmed the judgment of conviction and order of sentence passed by learned trial court vide its order dated 20.12.2005.

The submission of learned counsel is that the petitioners are government servants and they are not challenging the order of conviction recorded by two courts

below but at the same time it is quite possible that they may lose their job even after the probation granted by the Courts below, therefore, proper order may be passed so that conviction and sentence recorded by the learned trial court and subsequently confirmed by the learned appellate court may not affect their service career. Learned counsel has placed reliance on decisions given in Rajbir Vs. State of Haryana, Cr.L.R. (S.C) 1985 Page 285 and Bhagirath Ram Vs. State of Rajasthan, 2002 (3) R.Cr.D. 560 (Raj.).

Learned Public Prosecutor has opposed the submissions made by learned counsel for the petitioner.

I have considered the submissions made before me.

In Rajbir's case (supra), the conviction was recorded under Section 323 IPC and the matter went up to Hon'ble Apex Court and Hon'ble Apex Court while considering the aspect of government service of the accused petitioner observed that no material was brought to show that the

accused was previously convicted, therefore, in the facts and circumstances of the case, it was observed that grant of probation shall not affect the government service.

In Bhagirath Ram's case (supra), where the judgment of conviction was not challenged on merit and only submission made was that probation granted by the court should not come in his service career, thus, this Court taking into consideration the fact that the accused appellant was convicted under Sections 323/34 and 342 IPC and considering the request made by the learned counsel for the appellant reasonable and proper the Court observed that the judgment of conviction and order of sentence would not afftect the service career of the accused appellant.

In the present case, judgment of conviction and order of sentence passed for the offences under Sections 323/149 and 147 IPC when challenged before the Appellate Court, same was confirmed and the the petitioners were given benefit of probation. In the above referred two authorities,

the offences were same more or less, therefore, while maintaining the judgment of conviction and order of sentence passed by the learned trial court and also the judgment of the learned Appellate Court, it is observed that probation extended to the petitioners shall not affect their service career.

In the result, the revision petition stands allowed as indicated hereinabove.

(SATYA PRAKASH PATHAK)J.

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